





in salary, written reprimand, or transfer for purposes of punishment.” (Gov. Code, § 3303.)

Before addressing each question in turn, we note that it is a fundamental principle of our justice system that persons having firsthand information concerning matters in dispute must testify, when called upon, about their observations and knowledge. (See, e.g., 8 Wigmore, Evidence (McNaughton ed. 1961) § 2192, pp. 70-73.) Evidence Code section 911<sup>1</sup> states:

“Except as otherwise provided by statute:

“(a) No person has a privilege to refuse to be a witness.

“(b) No person has a privilege to refuse to disclose any matter or to refuse to produce any writing, object, or other thing.

“(c) No person has a privilege that another shall not be a witness or shall not disclose any matter or shall not produce any writing, object, or other thing.”

However, as indicated in section 911, certain privileges allowing the withholding of relevant evidence are “otherwise provided by statute.” Here, we address two distinct “marital privileges.” The first is set forth in section 980:

“Subject to Section 912 and except as otherwise provided in this article, a spouse (or his guardian or conservator when he has a guardian or conservator), whether or not a party, has a privilege during the marital relationship and afterwards to refuse to disclose, and to prevent another from disclosing, a communication if he claims the privilege and the communication was made in confidence between him and the other spouse while they were husband and wife.”<sup>2</sup>

The second and broader privilege is set forth in sections 970 and 971. Section 970 provides: “Except as otherwise provided by statute, a married person has a privilege not to testify against his spouse in any proceeding.” Section 971 additionally states:

“Except as otherwise provided by statute, a married person whose spouse is a party to a proceeding has a privilege not to be called as a witness

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<sup>1</sup>All further references to the Evidence Code are by section number only.

<sup>2</sup>Section 912 refers to the waiver of various privileges.









